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AF 12851 \$

**COMBINED NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR
EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Large Entity)**

Docket No.
NEC00P063-TOb

In Re Application Of:

Kazuki Yokota

Serial No.
09/627,456

Filing Date
July 27, 2000

Examiner
Cruz, Magda

Group Art Unit
2851

Invention:

**OVERLAY MARK, METHOD OF MEASURING OVERLAY ACCURACY, METHOD OF MAKING ALIGNMENT
AND SEMICONDUCTOR DEVICE THEREWITH**

TO THE COMMISSIONER FOR PATENTS:

This is a combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of October 30, 2003 in the above-identified application.
Date

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated October 30, 2003 finally rejecting Claim(s) 1-27.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month ☐ Two months ☒ Three months ☐ Four months ☐ Five months

from: January 30, 2004
Date

until: April 30, 2004
Date

The fee for the Notice of Appeal and Extension of Time has been calculated as shown below:

Fee for Notice of Appeal: \$330.00

Fee for Extension of Time: \$0.00

(see attached)

TOTAL FEE FOR NOTICE OF APPEAL AND EXTENSION OF TIME: \$330.00

The fee for the Notice of Appeal and extension of time is to be paid as follows:

☒ A check in the amount of \$330.00 for the Notice of Appeal and extension of time is enclosed.

☐ Please charge Deposit Account No. _____ in the amount of _____

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-0481

☒ Any additional filing fees required under 37 C.F.R. 1.16. (DEFICIENCIES ONLY)

☐ Any patent application processing fees under 37 CFR 1.17.

☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. _____

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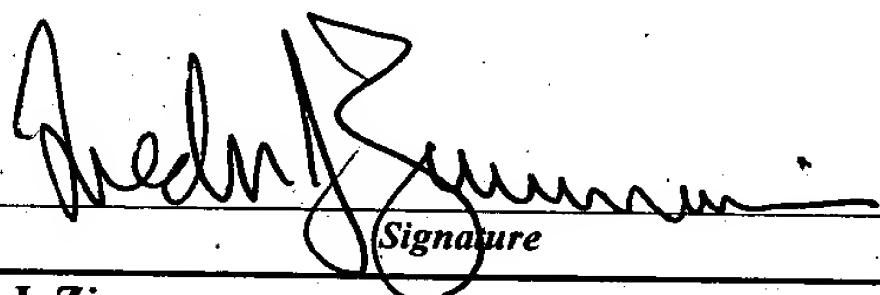
Group Art Unit
2851

Invention:

**OVERLAY MARK, METHOD OF MEASURING OVERLAY ACCURACY, METHOD OF MAKING ALIGNMENT
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TO THE COMMISSIONER FOR PATENTS:

This combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:


Signature

Dated:

4/30/04

Fredric J. Zimmerman
Registration No. 48,747
Customer No. 21254

Certificate of Transmission by Facsimile*

I certify that this document and authorization to charge
deposit account is being facsimile transmitted to the United
States Patent and Trademark Office (Fax. No. _____)

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(Date)

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Typed or Printed Name of Person Signing Certificate

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deposit account.**

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on _____ with the U.S. Postal Service as first
class mail under 37 C.F.R. 1.8 and is addressed to the
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450.

Signature of Person Mailing Correspondence

HAND DELIVERED

Typed or Printed Name of Person Mailing Correspondence

CC:

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Examiner
Cruz, Magda

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(Signature)

Dated:

4/30/04

Fredric J. Zimmerman
Registration No. 48,747
Customer No. 21254

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Certificate of Mailing

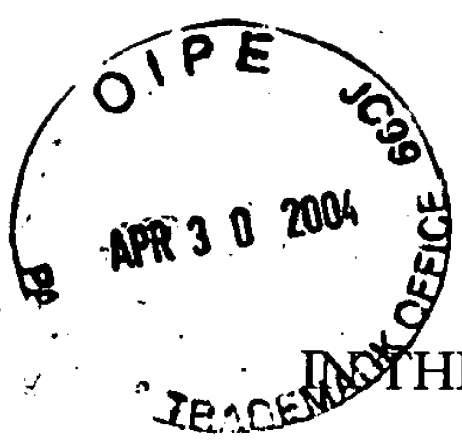
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Typed or Printed Name of Person Mailing Correspondence

CC:



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Kazuki Yokota

Serial No.: 09/627,456

Group Art Unit: 2851

Filed: July 27, 2000

Examiner: Cruz, Magda

For: OVERLAY MARK, METHOD OF MEASURING OVERLAP ACCURACY,
METHOD OF MAKING ALIGNMENT AND SEMICONDUCTOR DEVICE THEREWITH

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**NOTICE OF APPEAL AND CONDITIONAL PETITION AND FEE FOR
EXTENSION OF TIME UNDER 37 C.F.R. § 1.136(a)**

Sir:

In response to the Office Action dated **October 30, 2003**, the Applicant files the
Notice of Appeal and Conditional Petition and Fee For Extension of Time.

After Applicant timely filed a response to the Office Action on January 29, 2004, by
courier, Applicant contacted Examiner Cruz on numerous occasions (i.e., regarding the Status
of the Response, including faxing a copy of the January Response and date-stamped postcard
to the Examiner on February 23, 2004). It is noted that the January 29, 2004, response
included a Submission of Verified Translation to overcome all of the outstanding prior art
rejections.

In a recent interview Summary of March 22, 2004, Supervisory Examiner Adams and
Examiner Cruz expressly indicated that they were still waiting for the previously filed
Response to be scanned pursuant to the implementation of the USPTO's Image File Wrapper
System. Per Supervisor Adam's instructions, on April 15, 2004, Applicant recently re-
submitted the Response along with the Verified English Translation of the Priority Document
and a copy of the Attorney's Post Card Filing Receipt, date stamped at the USPTO on January

29, 2004. (See Enclosure).

Subsequent to the filing, Applicant contacted Supervisor Adams and Examiner Cruz on April 26, 2004, where the Examiners expressly indicated that they still have not received the Response, which apparently is still being scanned.

Applicant unsuccessfully tried today, April 30, 2004, to reach Supervisor Adams and Examiner Cruz. Accordingly, as indicated above, Applicant respectfully files the Notice of Appeal and the Conditional Petition and Fee For Extension of Time to prevent the Application from being abandoned.

Thus, Applicant has included a check of \$330.00 for the Notice of Appeal but respectfully requests that the Applicant not be charged the Fee for Extension of Time of \$950.00 as the timely filed Response is still being scanned at the USPTO, and the delay in obtaining the Examiner's reply (e.g., an Advisory Action or Notice of Allowance) and necessity for extension are due to the USPTO's delay.

But for the USPTO's delay in providing the file to the Examiner, no extension fee would have been required as all the outstanding rejections were overcome by filing the January 29, 2004, Response and Submission of Verified Translation. Nonetheless, Conditional Petition for Extension of Time is hereby made, and the Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Attorney's

Serial No. 09/627,456
WAK.059

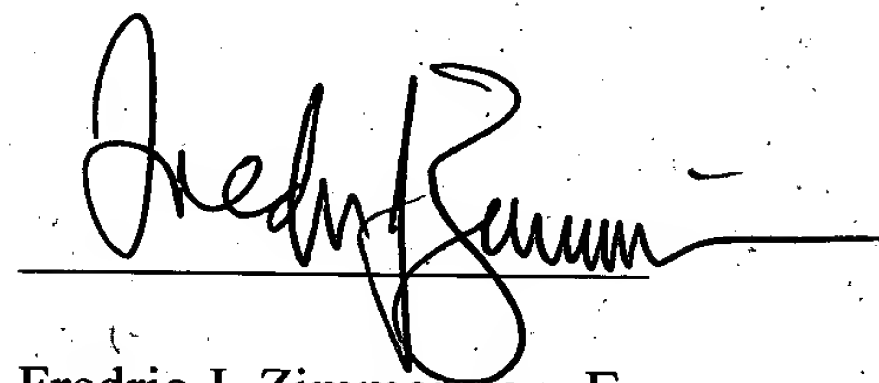
3

Deposit Account No. 50-0481 should the PTO Officials contend that it is necessary to charge the Applicant despite the internal PTO delay.

Date: April 30, 2004

McGinn & Gibb, PLLC
8321 Old Courthouse Rd., Suite 200
Vienna, Virginia 22182
(703) 761-4100
Customer No. 21254

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Fredric J. Zimmerman", written over a horizontal line.

Fredric J. Zimmerman, Esq.
Reg. No. 48,747



WAK.059 FJ2/vi
Serial Number: 091627,456
Attorney's Post Card Filing Receipt
Papers Filed On: 04/15/04
Attorney's Docket Number: NEC 00P063-T0 ☒ Patent ☐ Trademark
Applicant's Name: Yokota, K. Application Filing Date: 07/27/00
Papers Filed Herewith:
☐ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ 1 Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts
☒ Other Re-Submission of Response filed on January 29, 2004 to Final Office Action
Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:
Hand Delivered

WAK.059 FJ2/vi
Serial Number: 091627,456
Attorney's Post Card Filing Receipt
Papers Filed On: 04/15/04
Attorney's Docket Number: NEC 00P063-T0 ☒ Patent ☐ Trademark
Applicant's Name: Yokota, K. Application Filing Date: 07/27/00
Papers Filed Herewith:
☐ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ 1 Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts
☒ Other Re-Submission of Response filed on January 29, 2004 to Final Office Action
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